

Retaliation against lawyers who support human rights

1. The Lawyers Committee for Human Rights is deeply concerned about the harassment and abuse of lawyers whose work as practising attorneys supports basic human rights. Though international instruments nominally protect human rights lawyers from abuse, in practice they often face restrictions, prosecution, or outright violence in retaliation for their work. Whether direct or indirect, physical or "legal", such measures threaten not only the work of individuals but also the integrity of important institutions, and by extension, the societies to which they belong.
2. Out of the many cases of violations against human rights lawyers that the Lawyers Committee for Human Rights encounters each year, those that follow are merely representative instances of a much larger pattern of abuse.

Professional restrictions

3. Lawyers often face threats of administrative sanction and professional harassment in retaliation for their advocacy in support of human rights. Government action may take the form of professional restrictions, such as disbarment or disqualification from the practice of law, or restrictions on speech or public advocacy.
4. The case of Vera Stremkovskaya, a Belarus lawyer, is illustrative. Ms. Stremkovskaya has faced repeated threats of disbarment for her pro bono representation of politically unpopular clients. Concerned about the state of human rights and the practice of law in Belarus, Ms. Stremkovskaya attended meetings with human rights groups in New York in September 1998. She criticized deficiencies in Belarus' legal system, making reference to the harsh conditions of pre-trial confinement for two of her clients. Upon her return, apparently spurred by reports filed by Belarusian officials who attended the meetings, the Justice Ministry accused her of "illegal" and "unethical" behaviour - revealing confidential information about the investigation against her clients - though the same information had been widely reported in the Belarusian media.
5. Since then, high government officials have threatened administrative and criminal sanctions. The supportive response for Ms. Stremkovskaya from the international community has only exacerbated her "crime" in the eyes of Belarusian officials, some of whom have told her she must choose between the practice of law and human rights advocacy in order to avoid sanctions. This case is not isolated; indeed, Ms. Stremkovskaya is one of a dwindling number of Belarusian lawyers who remain available to represent dissidents in criminal matters.
6. When lawyers like Ms. Stremkovskaya speak about their cases or legal system, their comments are specifically protected by international law, including article 23 of the United Nations Basic Principles on the Role of Lawyers, which provides that:

[Lawyers] shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local,

national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

7. In addition, the right to promote human rights by speech and association is protected by articles 1, 5 and 6 of the United Nations "Declaration on Human Rights Defenders". These safeguards help implement the fundamental right to free speech and association guaranteed by articles 19 and 22 of the International Covenant on Civil and Political Rights, and articles 19 and 20 of the Universal Declaration of Human Rights. When lawyers face professional restrictions because of their human rights activities, these long-standing international rights are violated.

Abuse of legal process

8. States often use lawsuits, both criminal and civil, as a tool for punishing human rights lawyers. For example, 25 lawyers from Diyarbakir, Turkey, are facing criminal sanctions in apparent retaliation for representing unpopular clients. For more than five years, Turkish officials have pursued charges that the attorneys have abetted a terrorist organization. During this period, at least 16 of the lawyers were subjected to torture while in pre-trial detention. Each faces up to seven years' imprisonment if convicted.

9. The very evidence presented against these lawyers suggests that charges were motivated by their support for local human rights organizations and representation of unpopular defendants. The primary evidence is testimony of a convict who made accusations against the lawyers in return for commutation of his death sentence and release from prison. A second witness recanted her coerced testimony, while other prosecution evidence is either implausible or contradictory.

10. Other lawyers have suffered retaliation at the hands of the judiciary for their attempts to vigorously defend their clients and uphold international procedural requirements. Zainur Zakaria, a Malaysian lawyer representing former Deputy Prime Minister Anwar Ibrahim, was recently convicted of contempt of court for presenting an affidavit alleging that prosecutors fabricated evidence against his client. Refusing to rule on the merits of Mr. Zainur's argument, the judge summarily ruled it frivolous.

11. Even international officials may face retribution for their official acts. Dato' Param Kumaraswamy, United Nations Special Rapporteur on the independence of judges and lawyers, was sued for libel based upon comments made about the Malaysian legal system in the course of his mission for the United Nations. Despite the clear immunity afforded to special rapporteurs by international treaty, judicial and executive branch officials disregarded the United Nations Secretary-General's certificate of immunity on Mr. Kumaraswamy's behalf, forcing him to defend the suit for many months in Malaysia, at tremendous personal cost.

12. The misuse of legal process to punish lawyers for their representation of unpopular clients and support for human rights is strictly prohibited by international law. Paragraphs 16, 17, 18 and 20 of the Basic Principles prohibit prosecution and other sanctions for actions taken by lawyers in

accordance with their professional duties. Similarly, the "Declaration on Human Rights Defenders" requires States to protect from criminal sanction those who promote human rights. These requirements are intended to support the fundamental right to fair use of criminal process and sanctions. Punishing lawyers in retaliation for internationally protected activity clearly violates these norms.

Physical violence

13. Physical abuse, torture and other harassment continue to accompany administrative and judicial means to suppress the work of lawyers in support of human rights. Particularly disturbing is the case of Letizia del Valle Gimenez, an Argentine lawyer who has been subjected to degrading physical abuse in retaliation for her support of human rights. During visits to her clients in prison, officials have required intrusive vaginal searches, performed by female guards in an unsanitary manner and accompanied by verbal harassment. The stress from these repeated searches has aggravated a pre-existing illness, a condition about which prison officials were aware when the abuse occurred.

14. These searches are clearly retaliatory. Harassment began shortly after Ms. Gimenez filed a complaint regarding the torture of one of her clients in another prison. As a result of the abuse, Ms. Gimenez has been unable to continue the practice of law. Her attempt to remedy the situation in local courts has been largely ineffective as the courts have so far ignored a 1996 decision by the Inter-American Commission on Human Rights in *X and Y v. Argentina*, which laid out specific rules to remedy the problem of unlawful and invasive searches of females in Argentine prisons. Ms. Gimenez' clients have been thoroughly intimidated and prison officials continue to claim the right to subject her to this treatment.

15. Protecting human rights lawyers from physical abuse is a clear obligation of international law, secured explicitly by paragraph 17 of the Basic Principles and article 12 of the "Declaration on Human Rights Defenders". These requirements echo basic international norms protecting all individuals from arbitrary violence, torture or other abuse. The international community should not countenance such acts by any State against any person.

Conclusion

16. These examples highlight the ways that States manipulate presumptively legitimate administrative and legal mechanisms and resort to physical abuse in order to retaliate against human rights lawyers. While such abuse is not unique to lawyers, the examples above suggest two conclusions regarding lawyer-specific human rights violations. First, such abuses are particularly troubling because their effects are felt both by the lawyer and his or her clients. Thus, the violations described above have a devastating effect, depriving the lawyer's already vulnerable clients of necessary legal protection. Without legal assistance, these clients, who are often victims of abuses themselves, are left unprotected from the very State responsible for the abuse of their lawyer. Thus, an effective legal community, free to support international rights norms without fear of professional, legal or

physical sanction, is necessary to help protect other vulnerable citizens. The Commission on Human Rights should highlight the unique role that lawyers exercise and strongly condemn retaliatory sanctions against lawyers who support human rights.

17. In addition, harassment of lawyers has the effect of forcing them to choose between support for human rights and the practice of law; a false "choice" that is premised on a separation of the practice of local law from support for international human rights. As the Basic Principles on the Role of Lawyers and the "Declaration on Human Rights Defenders" make clear, lawyers are entitled and encouraged to incorporate human rights principles into their practice, and should not suffer retribution for doing so. The Lawyers Committee calls upon the Commission on Human Rights to support efforts to strengthen the protection of human rights lawyers in international law.
